



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 31, 2020

The Honorable Matt Krause
State Representative
House District 93
P.O. Box 2910
Austin, Texas 78768-2910

OR2020-19237

Dear Representative Krause:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 836148.

The Office of Representative Matt Krause (the "representative's office") received a request for written communications between the representative's office and any other person or organization regarding the requestor and/or the requestor's daughter, to exclude communications directly with the requestor. You seek a decision from this office as to whether certain responsive communications between the representative's office and the Texas Health and Human Services Commission (the "HHSC") are excepted from disclosure under sections 552.008 and 552.101 of the Government Code. We have considered your arguments and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note some of the submitted information, which we marked, is not responsive to the instant request for information because it was created after the receipt of the instant request. This ruling does not address the public availability of any information that is not responsive to the request and the representative's office is not required to release such information in response to this request.

Next, we address the applicability of section 552.008 of the Government Code to your request for a ruling. Section 552.008 of the Government Code authorizes individual members, agencies, or committees of the Texas Legislature to access otherwise confidential information for official legislative purposes, but ensures the confidentiality of that

information is maintained by allowing governmental bodies to require legislators and staff to execute a confidentiality agreement. Section 552.008 provides as follows:

(a) [The Act] does not grant authority to withhold information from individual members, agencies, or committees of the legislature to use for legislative purposes.

(b) A governmental body on request by an individual member, agency, or committee of the legislature shall provide public information, including confidential information, to the requesting member, agency, or committee for inspection or duplication in accordance with this chapter if the requesting member, agency, or committee states that the public information is requested under this chapter for legislative purposes. A governmental body, by providing public information under this section that is confidential or otherwise excepted from required disclosure under law, does not waive or affect the confidentiality of the information for purposes of state or federal law or waive the right to assert exceptions to required disclosure of the information in the future. The governmental body may require the requesting individual member of the legislature, the requesting legislative agency or committee, or the members or employees of the requesting entity who will view or handle information that is received under this section and that is confidential under law to sign a confidentiality agreement that covers the information and requires that:

(1) the information not be disclosed outside the requesting entity, or within the requesting entity for purposes other than the purpose for which it was received;

(2) the information be labeled as confidential;

(3) the information be kept securely; or

(4) the number of copies made of the information or the notes taken from the information that implicate the confidential nature of the information be controlled, with all copies or notes that are not destroyed or returned to the governmental body remaining confidential and subject to the confidentiality agreement.

Id. § 552.008(a)-(b). Section 552.008 further provides in relevant part that,

A member, committee, or agency of the legislature required by a governmental body to sign a confidentiality agreement under Subsection (b) may seek a decision as provided by Subsection (b-2) about whether the information covered by the confidentiality agreement is confidential under law. A confidentiality agreement signed under Subsection (b) is void to the

extent that the agreement covers information that is finally determined under Subsection (b-2) to not be confidential under law.

The member, committee, or agency of the legislature may seek a decision from the attorney general about the matter. The attorney general by rule shall establish procedures and deadlines for receiving information necessary to decide the matter and briefs from the requestor, the governmental body, and any other interested person.

...

Id. § 552.008(b-1)-(b-2). This provision of the Act allows legislative requestors to ask this office to confirm whether a governmental body's assertions of confidentiality meet the requisite legal standard to withhold the requested information from disclosure. However, as noted, section 552.008(b-1) provides that "A member, committee, or agency of the legislature *required by a governmental body to sign a confidentiality agreement under Subsection (b)* may seek a decision as provided by Subsection (b-2) about whether the information *covered by the confidentiality agreement* is confidential under law." *Id.* § 552.008(b-1) [Emphasis added]. You state the HHSC indicated it released the information at issue to the representative's office for legislative purposes, in accordance with the representative's office's legislative right of access pursuant to section 552.008(b) of the Government Code. However, you also state your office was not required to sign a confidentiality agreement. Additionally, we note your request for a decision from this office was prompted by a public information request you received from a member of the public. Accordingly, because the representative's office informs us that no confidentiality agreement was signed in accordance with section 552.008(b) of the Government Code with respect to the information at issue, we conclude your request to this office for a ruling was not made pursuant to sections 552.008(b-1) and (b-2), and did not trigger the requirements as set forth at subchapter A of chapter 63 of Title 1 of the Texas Administrative Code. *See* 1 T.A.C § 63.1 *et. seq.* (setting forth procedures by which the attorney general shall render a decision sought by a legislative requestor under section 552.008(b-2)). Instead, we will address your request for a ruling in accordance with the requirements set forth under section 552.301 of the Government Code for responding to requests for public information under the Act.¹ *See* Gov't Code 552.008 (disclosure of excepted or confidential information to a legislator under section 552.008 does not waive or affect the confidentiality of the information or the right to assert exceptions in the future regarding that information).

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101.

¹ *See* Gov't Code §§ 552.301(b) (requiring a governmental body to ask for the attorney general's decision and to state the exceptions that apply within ten business days of receiving the written request), 552.301(e) (requiring a governmental body to submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents).

Section 552.101 encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. The representative's office indicates the submitted information is confidential under section 552.101 in conjunction with common-law privacy. However, the representative's office informs us the requestor is the legal representative of the individual whose privacy interest is at issue. *See* Gov't Code § 552.023(a) ("person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect that person's privacy interests"); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Thus, the representative's office asserts, and we agree, the requestor has a right of access to information pertaining to the individual that would otherwise be confidential under common-law privacy. Accordingly, the representative's office may not withhold the submitted information from this requestor under section 552.101 on the basis of common-law privacy.

Nevertheless, section 552.117(a)(1) of the Government Code excepts from disclosure the current and former home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former employees or officials of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code.² Gov't Code § 552.117(a)(1). We note section 552.117 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 is not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee or official who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee or official who did not timely request under section 552.024 the information be kept confidential. Accordingly, if the individual whose information is at issue timely requested confidentiality under section 552.024 of the Government Code and the cellular telephone service is not paid for by a governmental body, the representative's office must withhold the cellular telephone number we marked under section 552.117(a)(1) of the Government Code. Conversely, if the individual at issue did not timely request confidentiality under section 552.024 or the cellular telephone service is paid for by a governmental body, the representative's office

² The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481, 480 (1987), 470 (1987).

may not withhold the marked information under section 552.117(a)(1) of the Government Code. As no further arguments against disclosure have been made to this office, the representative's office must release the remaining information.³

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Deborah Southerland
Assistant Attorney General
Open Records Division

DS/jm

Ref: ID# 836148

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³ We note the information being released contains information to which the requestor has a right of access under section 552.023 of the Government Code. Thus, if the representative's office receives another request for this same information from a different requestor, the representative's office must again seek a ruling from this office.